

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Sep 09, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

LARAMIE PLEASANT, a single  
person,

Plaintiff,

v.

WASHINGTON STATE,  
WASHINGTON STATE PATROL,  
CHIEF JOHN R. BATISTE,  
individually and in his official capacity,  
TROOPER MICHAEL L.  
CHRISTENSEN, individually and in  
his official capacity, TROOPER KARL  
A. FENSTER, individually and in his  
official capacity, TROOPER AARON  
A. NORTON, individually and in his  
official capacity, TROOPER  
CHARLES ROB GARDINER,  
individually and in his official capacity,  
TROOPER JENNIFER D. BARRETT,  
individually and in his official capacity,  
LAMARR B. CRAIG, a single person,  
and PROBATION OFFICER FISK,  
individually and in his official capacity,

Defendants.

No. 2:23-CV-00246-MKD

ORDER DIRECTING  
SUPPLEMENTAL BRIEFING AND  
GRANTING MOTION TO DISMISS  
AS TO DEFENDANT JENNIFER D.  
BARRETT

**ECF No. 45**

1 Before the Court is a Motion for Summary Judgment filed on behalf of all  
2 Defendants, except Defendant Lamarr B. Craig (hereinafter “the State  
3 Defendants”). ECF No. 22. On August 6, 2024, the Court held a hearing on the  
4 motion. ECF No. 38. Douglas Phelps appeared on behalf of Plaintiff Laramie  
5 Pleasant, and Tyler D. Lloyd and Michael Stapleton<sup>1</sup> appeared on behalf of the  
6 State Defendants.

7 On review of the motion and the docket, there are outstanding legal issues  
8 requiring additional briefing, as set forth below.

9 **A. Sovereign Immunity and the Eleventh Amendment**

10 Plaintiff pursues federal and state law causes of action against a state, a state  
11 police force, state police officers, and a state probation officer in their official and  
12 individual capacities. ECF No. 1 at 1. The State Defendants move for summary  
13 judgment on the state law claims on Eleventh Amendment grounds. ECF No. 22 at  
14 19. Their Eleventh Amendment arguments do not differentiate between the  
15 different categories of State Defendants named in this suit (a state, a state police  
16 force, and state officers), nor do they differentiate between the claims against the

---

17  
18 <sup>1</sup> Mr. Stapleton appeared as a licensed legal intern under Washington Supreme  
19 Court Admission and Practice Rule 9, supervised by Mr. Lloyd. On August 7,  
20 2024, Mr. Stapleton filed a Notice of Association with Mr. Lloyd. ECF No. 40.

1 officer Defendants in their official capacities and the claims against the officer  
2 Defendants in their individual capacities. *See id.*

3 “The Eleventh Amendment grants a State immunity from suit in federal  
4 court . . . by its own citizens . . . .” *Walden v. Nevada*, 945 F.3d 1088, 1092 (9th  
5 Cir. 2019) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)). This immunity extends  
6 to claims brought against state agencies in federal court. *City of San Juan*  
7 *Capistrano v. Cal. Pub. Utils. Comm’n*, 937 F.3d 1278, 1281 (9th Cir. 2019)  
8 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 97-100 (1984)).  
9 “State officials sued in their official capacities are generally entitled to Eleventh  
10 Amendment immunity.” *Lund v. Cowan*, 5 F.4th 964, 969 (9th Cir. 2021) (citing  
11 *Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007)). This is because “a suit  
12 against a state official in his or her official capacity is not a suit against the official  
13 but rather is a suit against the official's office. . . . As such, it is no different from a  
14 suit against the State itself.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71  
15 (1989) (citations omitted).

16 The Court directs the parties to brief whether (1) Plaintiff’s claims—under  
17 federal and state law—against the State, State Patrol, and state officials in either  
18 their individual capacities are cognizable in light of the Eleventh Amendment;  
19 (2) if the Eleventh Amendment precludes certain claims, which claims, if any,

1 survive; and (3) what relief sought by Plaintiff is recoverable as to each State  
2 Defendant, consistent with the Eleventh Amendment.

3 **B. Fed. R. Civ. P. 12(b)(6)**

4 “[A] trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P.  
5 12(b)(6).” *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 335 (9th Cir.  
6 2015) (quoting *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987))  
7 (quotation marks and alteration omitted). “[T]he district court must give notice of  
8 its *sua sponte* intention to dismiss and provide the plaintiff with ‘an opportunity to  
9 at least submit a written memorandum in opposition to such motion.’” *Id.* (quoting  
10 *Wong v. Bell*, 642 F.2d 359, 362 (9th Cir. 1981)).

11 Defendants Craig and “Probation Officer Fisk” are named in the Complaint  
12 and have been served. ECF No. 1 at 2-3 ¶ 1.6; ECF Nos. 10-11. Counsel for the  
13 other State Defendants has also appeared on behalf of Defendant Officer Fisk.  
14 ECF Nos. 3, 35. Defendant Craig has not responded or appeared to date. It is  
15 exceedingly difficult to comprehend any possible claim that the facts alleged in the  
16 Complaint state against Defendants Craig and Officer Fisk. *See* ECF No. 1. In  
17 fact, the Complaint lists Defendant Craig in the caption and states that he was  
18 driving the vehicle, but the Complaint fails to name Defendants Craig and Officer  
19 Fisk in any of Plaintiff’s causes of action. *See id.* at 7-13. Plaintiff has now  
20 moved for entry of default as to Defendant Craig, despite the fact he is not named

1 in any specific cause of action. ECF No. 44. The Court continues to hold that  
2 motion in abeyance pending the further briefing ordered below. *See* ECF No. 46.

3 Plaintiff is hereby given notice of the Court's intent to dismiss any claims  
4 against Defendants Craig and Officer Fisk *sua sponte*. Consistent with the below  
5 schedule, Plaintiff shall file briefing explaining the bases of these claims.

6 **C. Motion to Dismiss Defendant Barrett, ECF No. 45**

7 On August 14, 2024, Plaintiff filed a motion to dismiss Defendant Jennifer  
8 Barrett without prejudice due to the failure to locate and serve her. ECF No. 45.  
9 The Court held the motion in abeyance. ECF No. 46. Pursuant to Fed. R. Civ. P.  
10 41(a)(1)(A)(i), a plaintiff may voluntarily dismiss an action without a court order  
11 prior to the opposing party filing an answer or summary judgment. Defendant  
12 Barrett has not been served and has not filed an answer or motion for summary  
13 judgment. The Court grants Plaintiff's motion, ECF No. 45 and dismisses the  
14 action against Defendant Jennifer Barrett without prejudice.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. The State Defendants' Motion and Memorandum for Summary  
17 Judgment, **ECF No. 22**, is **HELD IN ABEYANCE**.

18 2. Plaintiff's Motion to Dismiss, **ECF No. 45**, is **GRANTED**. The  
19 action against Defendant Jennifer Barrett is **DISMISSED** without prejudice.  
20

1           3.     **By September 23, 2024**, Plaintiff shall file a brief explaining why the  
2 claims against Defendants Craig and Officer Fisk should not be dismissed for  
3 failure to state a claim.

4           4.     **By September 23, 2024**, Plaintiff and the State Defendants shall each  
5 file a supplemental brief, **not to exceed ten pages**, on the issues identified related  
6 to the Eleventh Amendment.

7           5.     **By September 30, 2024**, Plaintiff and the State Defendants may each  
8 file a responsive brief, **not to exceed eight pages**, responding to each other's  
9 positions in the supplemental briefing related to the Eleventh Amendment.

10          **IT IS SO ORDERED.** The District Court Executive is directed to file this  
11 order and provide copies to counsel.

12                 **DATED** September 9, 2024.

13                         s/Mary K. Dimke  
14                         MARY K. DIMKE  
15                         UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20